

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 11/10/2022

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FRANKIE LIPSETT,

Plaintiff,

- against -

BANCO POPULAR NORTH AMERICA (d/b/a  
POPULAR COMMUNITY BANK),

Defendant.

22 Civ. 3901 (VM)

ORDER

**VICTOR MARRERO, United States District Judge.**

The Court has reviewed the Defendant, Banco Popular N.A.'s (d/b/a Popular Community Bank) ("BPNA") motion to compel arbitration and reply brief as well as Plaintiff, Frankie Lipsett's ("Lipsett") opposition. (See Dkt. Nos. 20-23.) The parties generally agree that, after Lipsett opened his account with BPNA in 2004, BPNA amended its agreement with Lipsett -- the Personal Banking Disclosure and Agreement ("PBD&A") -- several times; first in 2008 (see Dkt. No. 21, Ex. A-3), then again in 2014 (id., Ex. A-4), and again in 2021 (id., Ex. A-6) (together, the "Amended Agreements").

The Court requests supplemental briefing addressing the following factual and legal issues related to the above, including any on-point legal authority:

1. whether BPNA's offerings of the 2014 PBD&A and 2021 PBD&A were a request by BPNA to Lipsett "to enter into a new deposit agreement," under the respective arbitration provisions; and

2. the extent to which a party subject to an agreement containing an arbitration provision with an opt-out clause (such as the Amended Agreements) has a continuing obligation or opportunity to opt-out of arbitration each time the contract is amended or whether the party is bound by their assent to or rejection of arbitration at the first instance the opt-out procedure is offered.

The Court directs the parties to file a joint letter-brief addressing these issues by November 21, 2022. Each parties' portion may not exceed three pages.

**SO ORDERED.**

Dated: 10 November 2022  
New York, New York

A handwritten signature in blue ink, appearing to read 'VM', is written above a horizontal line.

Victor Marrero  
U.S.D.J.